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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,660	06/16/2000	Eric Teller	1148/015	2830

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EXAMINER

PASS, NATALIE

ART UNIT PAPER NUMBER

3626

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/595,660	<b>Applicant(s)</b> TELLER ET AL.	
	<b>Examiner</b> Natalie A. Pass	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 104-127 and 137-174 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 104-127 and 137-174 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/20/05, 9/13/05, 9/15/05</u> | 6) <input type="checkbox"/> Other: _____  |

*PH*

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 20 June 2005. Claims 104, 124, 153, and 157 have been amended. Claims 1-103 and 128-136 have been previously cancelled. Claims 171-174 have been newly added. The IDS statements filed 20 June 2005, 13 September 2005, and 15 September 2005 have been entered and considered. Claims 104-127 and 137-174 remain pending.

### ***Claim Objections***

2. The objections to claims 104, 124, 153, 157 because of informalities is hereby withdrawn due to the amendment filed 20 June 2005.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:-

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Newly added claim 174 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 174 recites "a method according to claim 104..." in the preamble, however newly added claim 171 recites the same, word-for-word "method according to claim 104...." As such it is unclear whether in claim 174 Applicant seeks patent protection for the same limitations recited in claim 171. For the purpose of finding art, Examiner interprets claim 174 to recite, "a method according to claim 157...."

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 104-112, 114, 117, 119, 124-127, 137, 139, 142, 144, 171-172 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471 for substantially the same reasons given in the previous Office Action (paper number 12022004), and further in view of Amano et al, U.S. Patent Number 5, 941, 837. Further reasons appear hereinbelow.

(A) Claims 104, 124 have been amended to recite the limitations of

- "said individual wearing a wearable physiological monitoring device" in the preamble;
- "with said wearable device, said generated data" indicative of "a first parameter" in lines 8-9, respectively;
- "generating data indicative of a second parameter of said individual with at least one of said wearable device and a second device" in lines 11-12, respectively;
- "communicating to a recipient" in line 16, respectively.

As per newly amended claims 104, 124, Brown300 and Alyfuku teaches a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal, said individual wearing a wearable physiological monitoring device (Alyfuku; Figure 37, Item 183, Figure 42, Item 209, Figure 43, Items S304 to S309, column 24, lines 36-40) the method further comprising:

generating data with said wearable device, said generated data indicative of "the artery blood pressure" (reads on "a first parameter") (Alyfuku; column 24, lines 36-40); and

generating data indicative of "pulse rate" (reads on "a second parameter of said individual") with at least one of said wearable device and a second device (Alyfuku; column 24, lines 31-46).

Brown300 and Alyfuku fail to explicitly disclose communicating to a recipient said determined quantitative status information regarding said individual.

However, the above features are well-known in the art, as evidenced by Amano.

In particular, Amano teaches

communicating to a recipient said determined quantitative status information regarding said individual (Amano; column 8, lines 11-23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Brown300 and Alyfuku to include communicating to a recipient, as taught by Amano, with the motivations of informing the user in a timely manner, as for example, notifying the user to proceed to the next stage of exercise, providing the user with rapid notification in the case where his health state as observed from circulation has worsened compared to its usual state, allowing the user is able to make active efforts to maintain his health

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and making it possible to carry out exercise appropriately even when unaccompanied by a doctor or nurse (Amano; column 8, lines 22-23, 28-30, 43-44, 49-51).

The remainder of claims 104 and 124 is rejected for the same reasons given in the prior Office Action (paper number 12022004, section 5, pages 4-7), and incorporated herein.

The motivations for combining the respective teachings of Brown300 and Alyfuku are as given in the in the claim 104 rejection in the prior Office Action (paper number 12022004), and incorporated herein.

(B) Claims 105-112, 114, 117, 119, 125-127, 137, 139, 142, 144 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 12022004, section 5, pages 8-10), and incorporated herein.

(C) As per newly added claims 171-172, Brown300, Alyfuku and Amano teach a method as analyzed and discussed in claims 104 and 124 above, further comprising the step of generating “calories” burned (reads on “derived data”) from said data indicative of “pulse rate and exercise duration” (reads on “at least one of said first and second parameters”) (Amano; column 20, line 35 to column 21, line 5, column 21, line 60 to column 22, line 8), wherein said quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal is calculated from at least said derived data (Amano; column 8, lines 11-23, column 21, line 60 to column 22, line 8).

The motivations for combining the respective teachings of Brown300, Alyfuku, and Amano are as given in the prior Office Action (paper number 12022004), and in the rejection of claim 104 above, and incorporated herein.

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7. Claims 113, 118, 138, 143, 149, 152-153, 157, 167-170, 173-174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471 and Amano et al, U.S. Patent Number 5, 941, 837 as applied to claims 104 and 124 above, and further in view of Korenman et al, U.S. Patent Number 6, 067, 468 for substantially the same reasons given in the previous Office Action (paper number 12022004). Further reasons appear hereinbelow.

(A) Claims 153, 157 have been amended to recite the limitations of

- “with said wearable device, said generated data” in line 18, respectively; and
- “communicating to a recipient” in line 26, respectively.

As per newly amended claims 153, 157, Brown300, Alyfuku and Korenman teach a method as analyzed and discussed in the prior Office Action (paper number 12022004), the method further comprising:

generating data with said wearable device, said generated data indicative of “the artery blood pressure” (reads on “indicative of one or more measured parameters”) (Alyfuku; column 24, lines 36-40);

Brown300, Alyfuku and Korenman fail to explicitly disclose communicating to a recipient said determined quantitative status information regarding said individual.

However, the above features are well-known in the art, as evidenced by Amano.

In particular, Amano teaches

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communicating to a recipient said determined quantitative status information regarding said individual (Amano; column 8, lines 11-23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Brown300, Alyfuku and Korenman to include communicating to a recipient, as taught by Amano, with the motivations of informing the user in a timely manner, as for example, notifying the user to proceed to the next stage of exercise, providing the user with rapid notification in the case where his health state as observed from circulation has worsened compared to its usual state, allowing the user is able to make active efforts to maintain his health and making it possible to carry out exercise appropriately even when unaccompanied by a doctor or nurse (Amano; column 8, lines 22-23, 28-30, 43-44, 49-51).

The remainder of claims 153 and 157 is rejected for the same reasons given in the prior Office Action (paper number 12022004, section 6, pages 14-20), and incorporated herein.

The motivations for combining the respective teachings of Brown300, Alyfuku and Korenman are as given in the prior Office Action (paper number 12022004), and incorporated herein.

(B) Claims 113, 118, 138, 143, 149, 152, 167-170 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 12022004, section 6, pages 8-10), and incorporated herein.

(C) As per newly added claims 173-174, Brown300, Alyfuku, Amano and Korenman teach a method as analyzed and discussed in claims 153 and 157 above, further comprising the step of generating “calories” burned (reads on “derived data”) from said data indicative of “pulse



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rate and exercise duration" (reads on "at least one of said first and second parameters") (Amano; column 20, line 35 to column 21, line 5, column 21, line 60 to column 22, line 8), wherein said quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal is calculated from at least said derived data (Amano; column 8, lines 11-23, column 21, line 60 to column 22, line 8).

The motivations for combining the respective teachings of Brown300, Alyfuku, Amano and Korenman are as given in the prior Office Action (paper number 12022004), and in the rejection of claim 153 above, and incorporated herein.

8. Claims 115-116, 120-121, 140-141, 145-146, 154-156, 158-166 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471, Amano et al, U.S. Patent Number 5, 941, 837 and Korenman et al, U.S. Patent Number 6, 067, 468 as applied to claims 104, 113 and 118 above, and further in view of Pottgen et al, U.S. Patent Number 5, 813, 994 and Nasiff, U.S. Patent Number 4, 757, 453 for substantially the same reasons given in the previous Office Action (paper number 12022004). Further reasons appear hereinbelow.

(A) Claims 115-116, 120-121, 140-141, 145-146, 154-156, 158-166 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 12022004, section 7, pages 21-26), and incorporated herein.

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9. Claim 122 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, Alyfuku et al, U.S. Patent Number 5, 410, 471 and Amano et al, U.S. Patent Number 5, 941, 837 as applied to claim 104 above, and further in view of Brown et al, U.S. Patent Number 6, 032, 119, hereinafter known as Brown119 for substantially the same reasons given in the previous Office Action (paper number 12022004). Further reasons appear hereinbelow.

(A) Claim 122 has not been amended and is rejected for the same reasons given in the previous Office Action (paper number 12022004, section 8, pages 26-27), and incorporated herein.

10. Claim 123 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, Alyfuku et al, U.S. Patent Number 5, 410, 471, Amano et al, U.S. Patent Number 5, 941, 837 and Brown et al, U.S. Patent Number 6, 032, 119, hereinafter known as Brown119, as applied to claims 104 and 122 above, and further in view of Brown et al, U.S. Patent Number 5, 913, 310, hereinafter known as Brown310 for substantially the same reasons given in the previous Office Action (paper number 12022004). Further reasons appear hereinbelow.

(A) Claim 123 has not been amended and is rejected for the same reasons given in the previous Office Action (paper number 12022004, section 9, pages 27-28), and incorporated herein.

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11. Claims 147, 148, 150, 151 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, and Alyfuku et al, U.S. Patent Number 5, 410, 471, and Amano et al, U.S. Patent Number 5, 941, 837 as applied to claims 104 and 124 above, and further in view of Pottgen et al, U.S. Patent Number 5, 813, 994 for substantially the same reasons given in the previous Office Action (paper number 12022004). Further reasons appear hereinbelow.

(A) Claims 147, 148, 150, 151 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 12022004, section 10, pages 28-29), and incorporated herein.

#### ***Response to Arguments***

12. In response to Applicant's remarks concerning status of the claims in the response filed 20 June 2005, Examiner notes that on page 28, paragraph 2. Applicant has incorrectly listed the currently pending claims. Examiner notes that currently pending claims should have been listed as claims 104-127 and 137-174.

13. Examiner thanks Applicant for correcting the mark-ups of the claims in the response filed 20 June 2005, and has withdrawn the claim objections.

14. Applicant's arguments filed 20 June 2005 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the responses filed 20 June 2005.

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(A) At pages 31-32 of the 20 June 2005 response, Applicant argues that the features in the Application are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes as missing in the applied references, including the newly added features in the 20 June 2005 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Brown300, Alyfuku, Amano, Korenman, Pottgen, Nasiff, Brown119, and Brown310, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (paper number 12022004), and incorporated herein. In particular, Examiner notes that the recited features of calculating and communicating to a recipient said determined quantitative status information regarding said individual (Amano; column 8, lines 11-23, column 10, lines 5-11) and generating "calories" burned (reads on "derived data") from said data indicative of "pulse rate and exercise duration" (reads on "at least one of said first and second parameters") (Amano; column 20, line 35 to column 21, line 5, column 21, line 60 to column 22, line 8), wherein said quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal is calculated from at least said derived data (Amano; column 8, lines 11-23, column 21, line 60 to column 22, line 8) are taught by the combination of applied references. Examiner interprets Amano's utilization of the parameters of pulse rate and exercise duration in order to calculate calories burned and then determining "whether or not the total exercise amount measured is within a prespecified range centered around this target value" (Amano; column 21, line 66 to column 22, line 1) as reading on these limitations.

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(B) As per Applicant's arguments on page 31, line 18, that Amino "makes no calculation or other evaluation of the pulse waveforms," Examiner respectfully notes that this limitation is not recited in the claims."

(C) As per Applicant's arguments on page 31, lines 18-22, that Amino " makes no calculation or other evaluation...[...]... of the indicators in which the calculation utilizes body movement or any other parameters" and that "Amano does not use two parameters to calculate quantitative status information indicative of the relative degree of achievement of a specified goal," Examiner notes that these limitations have been discussed earlier in this Office Action.

### ***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. **Any response to this final action should be mailed to:**

**Box AF**

Commissioner of Patents and Trademarks  
Washington D.C. 20231

**or faxed to:** (571) 273-8300.

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For formal communications, please mark  
"EXPEDITED PROCEDURE".

For informal or draft communications, please label  
"PROPOSED" or "DRAFT" on the front page of the  
communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Natalie A. Pass

October 3, 2005

  
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